

AFFIDAVIT OF MICHAEL AGOSTINHO

1. I am a Special Agent with United States Department of Homeland Security, Immigrations and Customs Enforcement, Homeland Security Investigations ("HSI") and am assigned to the office of the Resident Agent in Charge, Providence, Rhode, Island. I have been an HSI agent since 2008. As part of my duties, I am authorized to investigate violations of the laws of the United States, including criminal violations relating to child exploitation, child pornography, coercion and enticement, and transportation of minors, including violations of 18 U.S.C. §§ 2422, 2251, 2252, and 2252A. I have received training in the investigation of child pornography, child exploitation, and transportation of minors, and have reviewed examples of child pornography as specified in 18 U.S.C. § 2256.

2. I submit this affidavit in support of an application for a criminal complaint and arrest warrant charging Brian Murphy (born in October 1969) (hereinafter "Murphy") with distribution and possession of child pornography, in violation of 18 U.S.C. § 2252(a)(2) and (a)(4).

3. The information in this affidavit is based my personal observations and investigation, my training and experience, and information provided by others, including law enforcement officers, probation officers, the National Center for Missing and Exploited Children ("NCMEC"), and Kik. This affidavit does not set forth the totality of my knowledge about this matter or investigation. I set forth here only the facts that I believe are necessary to assess and establish probable cause.

4. As described below, Murphy used his computer device to receive, viewed, and distributed child pornography. There is accordingly probable cause to believe that Murphy possessed and distributed child pornography in violation of federal law.

Probable Cause

5. In or around April 2022, NEMEC advised members of the Rhode Island Crimes against Children Task Force ("ICAC") that security personnel associated with Kik (a company that operates a mobile messaging application for chat communications, group chat communications, and the transmissions and receipt of messages, videos, pictures, and gifs) had in March 2022 become aware that an individual utilizing a Kik messenger account associated with user name "bialexdad" had uploaded 151 files containing child pornography and child erotica, using IP address 68.15.57.11. Those 151 files are presently in the custody of the ICAC.

6. Warwick Detective Patrick Smith, a member of the ICAC, examined some of the 151 files. One of the files is a video depicting a nude prepubescent female lying on her back being anally penetrated by a penis.

7. Detective Smith, through an inquiry with the American Registry of Internet Numbers, determined that the aforementioned IP address was utilized by Cox Communications. After legal process was issued, Cox Communications reported that the aforementioned IP address was associated with a business located at 138 Danielson Pike in North Scituate. Detective Smith, in July 2022, traveled to the address and found a multi-family building there with the business identified by Cox on the ground floor. The business was a coffee shop that provided Wi-Fi internet access for its customers. Detective Smith notice units above the coffee shop consistent with apartments.

8. According to tax assessor records, the building that houses the coffee shop is a mixed-use commercial building with units bearing addresses that include 138 Danielson Pike and 136 Danielson Pike. According to law enforcement databases, Murphy is registered as a Federal Level II sex offender and is listed as residing at 136 Danielson Pike, Unit 2, North Situate, RI 02857.

9. I know based on my training and experience and use of Wi-Fi services at retail stores and coffee shops that it is not uncommon for the Wi-Fi signal to reach beyond the confines of such stores or shops and that in a typical multi-family building with such a store or shop on the ground floor, it would not be uncommon for those who reside in the apartments above to be able to utilize computer devices to access the internet using the store's Wi-Fi signal.

10. Murphy was in 2009 convicted in this district on federal charges of possession and distribution of pornography and sentenced to 84 months of incarceration followed by a lifetime of supervised release. That case is docketed at 09-CR-0058-S. That case was the product of an HSI investigation, and I have reviewed case reports from that investigation. According to those reports, Murphy exchanged child pornography files with others utilizing a social media application named "Hello[,] " and his Hello account user name was "bidaddy69[,] " a name similar "bialexdad[,] " which is the user name for the Kik account that uploaded, according to Kik, 151 files containing child pornography.

10. U.S. Probation Officer Anthony Desjardin was apprised of the above described NECMEC referral, IP-address tie to the coffee shop, Murphy's proximity to the coffee shop and its Wi-Fi service, and the similarity of the user names. Based on this information, Probation Department, accompanied by HSI agents and other law enforcement officers, opted to search Murphy's person, property, and computer device pursuant to the reasonable suspicion search condition that was ordered as part of Murphy's supervised release. That condition reads as follows:

"The defendant submit to a search of his person, property house, residence, vehicle, papers, computer, or other electronic communication or data storage devices or media, and effects at any time, with or without a warrant, by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of supervised release."

11. This morning Probation Officer Desjardin approached Murphy as he was walking toward his car, which was parked in a parking area next to the multi-family building that houses Murphy's apartment, and the two spoke. Desjardin advised that he intended to conduct a reasonable suspicion search of Murphy's residence and car and that law enforcement agents were accompanying him. In the course of conversation, Murphy admitted that he had been viewing child pornography on a work "laptop."

12. Inside his residence, after being advised of his *Miranda* rights, Murphy told law enforcement agents that the computer was in his bedroom. Agents found the iPad in the bedroom closet and placed it into airplane mode. On cursory examination of the iPad, multiple images of child pornography were found. One particular image, which was located in an application entitled "Wickr Me," was sent from the iPad using the account name "bialexdad" to a chat room entitled "♥CP♥♥SHARE HERE♥♥N.L♥Tab00♥[.]" This image depicted two prepubescent males engaged in oral sex with one another and was sent on August 20, 2022 at 11:04 am. There were also several other images being sent and received in that chat room and others within the Wickr Me application.

13. After Murphy had been *Mirandized*, I spoke to him. He made the following admissions:

- he admitted to using his work computer to view child pornography and identified the iPad as his work computer,
- he admits to using the coffee shop Wi-Fi since he moved into his apartment and he indicated that he had been living in his apartment for approximately 4 years,
- he admitted that on the WickR application he uses the user name "bialexdad[.]"
- he said that he only used the iPad for viewing child pornography,

- he admitted that he both electronically send and received child pornography using a variety of social media application, including WickR,
- he said that his preferred child pornography age is 12, and
- he admitted that he understood that what child pornography was and that he used it for masturbation and sexual gratification purposes.

Conclusion

14. Based on the foregoing, I believe that there is probable cause to believe that Murphy possessed and distributed child pornography in violation of 18 U.S.C. § 2252(a)(2) and (a)(4).

Respectfully submitted,


MICHAEL AGOSTINHO
Special Agent

Attested to by the applicant in accordance with the requirements of Fed.
R. Crim. P. 4.1 by Telephone
(specify reliable electronic means)

August 24, 2022
Date


Judge's signature

Providence, Rhode Island
City and State

Lincoln D. Almond, U.S. Magistrate Judge
Printed name and title